UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/C.3/49/15
10 November 1994

ORIGINAL: ENGLISH

Forty-ninth session
THIRD COMMITTEE
Agenda item 100 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 2 November 1994 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum in connection with General Assembly resolution 48/150 of 20 December 1993, entitled "Situation of human rights in Myanmar".

I should be grateful if the aforementioned memorandum could be circulated as a document of the General Assembly, under agenda item 100 (c).

(Signed) Win MRA
Ambassador
Permanent Representative

94-44319 (E) 171194 211194

ANNEX

Memorandum relating to General Assembly resolution 48/150

Background

On the recommendation of the Third Committee, the General Assembly at its forty-eighth session adopted resolution 48/150, entitled "Situation of human rights in Myanmar". First, the resolution flagrantly attempted to interfere in the internal affairs of the Union of Myanmar. Second, it completely ignored the principles reaffirmed in the Vienna Declaration, namely, the principles of impartiality, objectivity and non-selectivity, on the promotion and protection of human rights. Thirdly, it was characterized by glaring negativism as regards the historic and significant developments taking place in Myanmar. For these reasons, the resolution was totally unacceptable to the Government of Myanmar and the Myanmar delegation dissociated itself from its adoption.

The resolution on Myanmar primarily contains the following elements and allegations:

(a) Restoration of democracy in accordance with the will of the people as expressed in the democratic elections in 1990; lack of progress in the National Convention; participation of the armed forces in a leading role in the future political life of the State;

(b) Protection of the rights of persons belonging to ethnic and religious minorities; torture; forced labour; summary executions, etc.;

(c) Continued violations of human rights in Myanmar; human rights instruments; access to prisons to be given to international humanitarian agencies;

(d) Flows of refugees to neighbouring countries;

(e) Release of Daw Aung San Suu Kyi;

(f) A request to the Secretary-General to assist in the implementation of the resolution and to report to the General Assembly at its forty-ninth session.

In the meantime, many positive developments have taken place in Myanmar and, seen in the context of new developments and other progress Myanmar has achieved, the elements in the resolution have become irrelevant. With a view to enabling the States Members of the United Nations to review the situation in Myanmar in its true perspectives, the following information is provided as regards the elements which are dealt with in the resolution in question.

National convention (restoration of democracy)

The resolution mentions the lack of progress in the National Convention.

The concerns about the perceived lack of evident progress in the National Convention are misplaced and demonstrate gross misunderstanding of the objectives and priorities of the Government of Myanmar. The Government of Myanmar is irreversibly committed to the establishment of a multi-party democratic society in the country through the process of National Convention. Many concrete results have been achieved by the National Convention.

The previous sessions of the National Convention have prescribed the chapter headings of the Constitution in their proper order and reached consensus on 104 fundamental principles of the State and detailed principles to serve as basis in the chapters "The State", "The State Structure", and "The Head of State". The National Convention which resumed on 2 September 1994 is having discussions on the matter of self-administered divisions or self-administered zones. After that, discussions will be held on the chapter headings "The Legislature", "The Executive" and "The Judiciary".

It may therefore be stated that the National Convention has achieved significant progress. The ongoing National Convention is a systematic political process in which political party delegates, representatives-elect, national races delegates, peasant delegates, worker delegates, intelligentsia delegates, service personnel delegates and invited persons participate. These delegate groups enjoy ample opportunity to present their views in an open and frank manner without hinderance. The major points in the statements made by the delegates are given wide media coverage. In the process of discussions, positive ideas and suggestions are sought from the delegates to obtain principles to serve as bases in writing the Constitution. With the participation of delegates representing various strata of the Myanmar population, the highly representative character of the National Convention is evident. The fact that the delegates can express divergent views in the full glare of the media is the proof of a truly democratic process going on in the National Convention.

The State Law and Order Restoration Council will not prolong the process unnecessarily. It is incumbent upon the delegates to strike a balance between the need to reach consensus among themselves on the vital issue of national races and the desire for the completion of the process in appropriate time.

The assertion that democracy should be restored in accordance with the will of the people as expressed in the democratic elections of 1990 is totally erroneous for the mandate of the representative elected in the 1990 elections is not to form a government but to draft a new constitution reflecting the democratic aspirations of the people. This drafting exercise has started through a process of free and open deliberation and mutual accommodation at the National Convention as mentioned above.

Role of the Myanmar armed forces (Tatmadaw)

Concern has been expressed with regard to the participation of the armed forces in a leading role in the future political life of the State.

The true situation is that the role envisaged for the Tatmadaw (armed forces) is a role in keeping with Myanmar's historical traditions. The history of modern Myanmar is synonymous with the history of the Tatmadaw. Since the time of the Myanmar struggle for national independence, it has been in the forefront of national politics. The Tatmadaw has always stayed above party politics. But it has always shouldered its primary responsibility of ensuring the non-disintegration of the Union, the non-disintegration of national solidarity and the consolidation of national sovereignty. To deny the leading institution of the country the corresponding role in the political life of the State will be unrealistic and illogical.

National reconciliation (protection of the rights of minorities)

The resolution urges the protection of the rights of persons belonging to ethnic and religious minorities. Contrary to the allegation, this is the area in which the Government has made the most dramatic achievements.

Since Myanmar is a Union made up of over 100 different national races, unity among the national races is vital for the preservation of the independence and sovereignty of Myanmar as well as for economic and social progress of the country. Beset with internal strife started by various armed groups immediately after independence, Myanmar had lagged in economic development far behind other nations in the region. The State Law and Order Restoration Council therefore attaches great importance to the strengthening of unity and solidarity among all national races. Since its inception, the State Law and Order Restoration Council has been giving priority to the achievement of national reconciliation. One year after assumption of State responsibilities, the State Law and Order Restoration Council made overtures to the armed groups to return to the legal fold. In parallel with these overtures, the State Law and Order Restoration Council strove for the development of border areas and national races. To demonstrate their genuine goodwill to the armed groups, the armed forces have unilaterally suspended military offensives against the armed groups since April 1992. With full trust in the sincerity of the Government, the following armed groups have returned to the legal fold as from 9 October 1994:

1.	Myanmar National Democracy Alliance (MNDA)	31 March 1989
2.	Myanmar National Solidarity Party (MNSP)	9 May 1989
3.	National Democracy Alliance Army Military and Local Administration Committee (NDAA)	30 July 1989
4.	Shan State Army (SSA)	24 September 1989
5.	New Democratic Army (NDA)	15 December 1989
6.	Kachin Defence Army (KDA)	11 January 1991

7.	Pa-O National Organization (PNO)	18 February 1991
8.	Palaung State Liberation Army (PSLP)	21 April 1991
9.	Kayan National Guards (KNG)	27 February 1992
10.	Kachin Independence Organization (KIO)	1 October 1993
11.	Kayinni National Liberation Front (KNLF)	9 May 1994
12.	Kayan Pyithit Party	26 July 1994
13.	Shan State Nationalities Peoples' Liberation Organization	9 October 1994

All these armed groups have agreed to renounce the armed struggle and to implement in concert with the Government the projects for regional peace and tranquillity and progress. There remain only two armed groups in Myanmar, namely, Mon and The Karen National Union. The Mon group has had three rounds of peace talks with the Government.

Over 40 years of internal strife have impeded the progress of the country. As a legacy of the colonial past, mistrust ran deep among the national races. The loss of life and property from insurgencies was immense. The present leadership has therefore realized that the progress of the country is inconceivable without solving the question of national races. Hence, achievement of national reconciliation has become the priority task on the national political agenda. The return of 13 armed groups to the legal fold is a significant political breakthrough which must be given due recognition.

The demands for the protection of the so-called ethnic minorities appear to have stemmed from prejudice against the Government of Myanmar rather than the genuine concerns about human rights. Instead of making such undue demands, the Government of Myanmar should be given full encouragement to enable it to build upon the achievements in the national reconciliation.

Development of border areas

Development of the border areas where many national races reside is one of the priority objectives of the present Government. As early as May 1989, the Central Committee and the Work Committee for the Development of Border Areas and National Races were established. To implement the development projects, a separate Ministry for the Development of Border Areas and National Races was established. This Ministry was reorganized into the Ministry of Progress of the Border Areas and National Races and Development Affairs in June 1994. At present, we have in place a master plan to implement the development of border areas and national races, covering a period of 11 years, from 1992/93 to 2003/04. The main objective of the master plan is poverty alleviation while at the same time eradicating poppy cultivation. During the period of the master plan, development works will be carried out in 18 regions in the north-west of the country which constitute 33.2 per cent of the total area of the country.

In view of this serious effort by the Government for the socio-economic advancement of the national races, there remains no justification at all for the clamour about the protection of the rights of the persons belonging to the so-called ethnic minorities.

Human rights

There have been persistent allegations that violations of human rights continue in Myanmar. It defies understanding that these unsubstantiated and unverifiable allegations are given credence regardless of the detailed replies to the allegations provided by the Government of Myanmar in response to the queries from the United Nations. It is not the policy of the Government of Myanmar to repress its own people or to condone human rights abuses. In addition, human rights have been observed in Myanmar as a matter of custom and tradition.

The Government of Myanmar is giving priority to the elimination of poverty, which is one of the most pressing human rights issues in the world today, and the narrowing of the gap between the rich and the poor; the city dwellers and the rural folk. Efforts are also being made to ensure that all citizens have equal opportunity in their access to food, housing, transportation, employment, education and health services.

We have permitted United States Congressmen and congressional aides to visit Insein jail and interview some inmates so that they could verify the allegations of human rights. The Special Rapporteur has also visited the Insein jail. The Government has also taken diplomats and visiting dignitaries and journalists to some areas of alleged human rights abuses such as the Myanmar-Bangladesh border area. In the first six months of 1994, nearly 100 foreign journalists, including television correspondents, visited Myanmar to see for themselves, first hand, the objective situation in Myanmar.

In another act of transparency and in deference to the United Nations, the Government of Myanmar has decided to receive the Special Rapporteur, Professor Yozo Yokota, this year again.

Allegations concerning torture, ill-treatment of prisoners, summary executions, forced labour, etc.

Allegations concerning torture, ill-treatment of prisoners, summary executions, forced labour, etc. are totally devoid of truth. They are unsubstantiated and emanate invariably from anti-government sources.

Torture, ill-treatment of prisoners and degrading punishment are strictly prohibited by law. The Prisons Act of 1894, which predates Myanmar's independence from the British, contains provisions to ensure that whoever commits torture on any detainee is liable to both imprisonment and fine.

There are no cases of summary executions committed as part of government policy. All defendants punishable by death in accordance with the Penal Code are entitled to due process of law. They are given a fair trial and provided

with defence counsel. They can exercise the right of appeal in accordance with the appeal procedure.

Allegations of forced labour stem from misunderstanding or ignorance of the Myanmar tradition and culture. Voluntary contribution of labour is a tradition which goes back thousands of years. People are free to contribute labour voluntarily and there is no coercion at all involved. Although such contribution of labour is voluntary in nature, the Government, in recognition of their contributions, has made substantial payment of remunerations for the community development of the local populace in the areas concerned.

Concerns about the rights of religious minorities are unfounded and misplaced. Myanmar is never reputed to be intolerant of religious minorities. The peaceful coexistence of the four religious, namely, Buddhism, Islam, Christianity and Hinduism, in Myanmar validates this claim. The independent expert of the Commission on Human Rights stated categorically in her report (E/CN.4/1991/R.3 of 27 October 1990) that, in the matter of religious tolerance, Myanmar society may be regarded as a model society. No remark can be more valid than an impartial one made by the independent expert.

References to these allegations in the resolution should be deleted.

Human rights instruments

The resolution appeals to the Government of Myanmar to consider becoming a party to human rights instruments.

Although Myanmar is not yet a party to the two international covenants on human rights mentioned in the resolution, Myanmar abides by those provisions and principles embodied in the covenants which are taken from the Charter of the United Nations and the Universal Declaration of Human Rights or have attained the status of rules of customary international law.

There are 68 internal laws and acts in Myanmar for protection of human rights. These laws, as well as customs, traditions and practices in Myanmar, are in fact in consonance with the provisions of international human rights instruments.

Myanmar and humanitarian agreements

Myanmar's commitments to humanitarian principles have been years-long and these principles have been not only part of the educational and training process in the Myanmar armed forces but also part of the values cherished by the Myanmar people for years.

Myanmar acceded to the four Geneva Conventions of 1949 in August 1992. With the cooperation of the International Committee of the Red Cross (ICRC), training programmes were conducted in Myanmar for officers ranging from Technical Operations Commanders to Lower-level officers. Under the auspices of ICRC, officers were sent to Geneva for training in the law of the war. Courses in humanitarian law form part of the curricula in the Defence Services Academy and other colleges in Myanmar. The Special Rapporteur in his report

(E/CN.4/1994/57) welcomed the undertaking of the courses for the officers of the armed forces.

Preparations for the signing of a Memorandum of Understanding with ICRC are under way.

Transborder movement of people (flows of refugees to neighbouring countries)

It is in the nature of things that some issues arise from time to time between neighbouring States. In such cases to seek peaceful solutions based on mutual goodwill, respect and understanding is a sine qua non for continued harmony in the relations between the States concerned and for regional peace and security. In its conduct of foreign policy, Myanmar is always guided by this principle. This policy has been vindicated in Myanmar's approach to the matter of transborder movement of people between Myanmar and Bangladesh. Despite various allegations against Myanmar, with some even invoking the potential of the situation for regional destabilization, Myanmar was determined to solve the situation in the spirit of mutual friendship and understanding and acted accordingly. In April 1992, the Government of Myanmar signed a bilateral agreement with the Government of Bangladesh and has been faithfully implementing that agreement. On 5 November 1993, the Government of Myanmar signed a Memorandum of Understanding with the Office of the United Nations High Commissioner for Refugees (UNHCR).

The Memorandum of Understanding provides for the presence of UNHCR on the Myanmar side of the border and guarantees the returnees the same freedom of movement as all other nationals. It also provides for means to enhance the economic stability and well-being of the returnees.

Myanmar is fully committed to the voluntary and safe repatriation of returnees and will be scrupulously faithful in implementing the agreements and arrangements made between the parties concerned. As at late September, over 75,000 returnees have been repatriated. Another 45,000 will return by the end of 1994.

Transborder movements on the eastern borders are mainly due to the border inhabitants seeking temporary shelter from armed clashes in the area. The inhabitants invariably return to their place of origin once the situation returns to normal.

Myanmar will continue to seek a peaceful solution to the problem of transborder migration of people wherever it occurs in the spirit of good-neighbourliness which exists between Myanmar and its neighbours, in the context of bilateral mechanisms or through bilateral channels. Reference to this problem in the resolution is therefore considered out of place.

Recent positive developments

Recently, many positive developments have occurred in Myanmar. The National Convention has achieved significant progress. The Government's genuine and sincere attempts at national reconciliation have led to the return to the legal fold of a total of 13 armed groups with only Mon and Karen National Union

remaining outside the legal fold. Furthermore, these groups have been provided with the opportunity to participate in the national political process of the country, namely, the National Convention.

In late September, Myanmar started an initial dialogue with the troika of the European Union in the most frank and cordial atmosphere. Although Myanmar dissociated itself from the adoption of the resolution on human rights referred to above, for reasons given above, in the spirit of cooperation Myanmar has made every effort to extend as much cooperation as possible to the United Nations. As desired by the Secretary-General, the Government of Myanmar decided to establish a dialogue with the United Nations to exchange views on various issues of common concern. U Ohn Gyaw, Minister for Foreign Affairs of the Union of Myanmar, representing the Government of Myanmar, has had three meetings with the Under-Secretary-General for Political Affairs, representing the Secretary-General, on 3, 6 and 12 October 1994 and the dialogue will continue in Yangon in the near future. One of the positive developments is the meeting between Senior General Than Shwe, Chairman of the State Law and Order Restoration Council, and Daw Aung San Suu Kyi in Yangon on 20 September 1994. On 28 October 1994, Lieutenant General Khin Nyunt, First Secretary of the State Law and Order Restoration Council, met with Daw Aung San Suu Kyi in a cordial atmosphere. The discussions, which were frank and cordial, covered the current political and economic situation of the country, the political and economic reforms which the State Law and Order Restoration Council is in the process of implementing and steps that should be taken with a view to the long-term welfare of the nation.

Consideration of the question of the situation in Myanmar at the forty-ninth session of the General Assembly

In view of the above-mentioned developments of significance, Myanmar believes that there is no valid ground for the adoption of a similar resolution on Myanmar at the current session of the General Assembly. The foregoing positive developments and considerations indeed warrant deferral of the consideration of any draft resolution on Myanmar to a future session of the Assembly. Accordingly, Myanmar wishes to urge the Member States to refrain from pursuing any action that might hamper the continuation of the ongoing constructive cooperation between Myanmar and the United Nations. However, if a draft resolution is to be introduced at the current session, it should faithfully reflect all the positive developments that have taken place in Myanmar.